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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BRYAN MAURICE JONES,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

D074665

(San Diego County
Super. Ct. No. CR136371)

Petition for writ of mandate from an order of the Superior Court of San Diego
County, Joan P. Weber, Judge. Petition denied.

Habeas Corpus Resource Center, Shelley J. Sandusky, Cliona Plunkett, and Rachel
G. Schaefer, for Petitioner.

No appearance for Respondent.

Summer Stephan, District Attorney, Mark A. Amador, Linh Lam and Samantha Begovich, Deputy District Attorneys, for Real Party in Interest.

Bryan Maurice Jones petitions for a writ of mandate challenging the court's denial of a postconviction discovery request for documents related to possible alternate suspects, pursuant to Penal Code¹ section 1054.9. Jones contends the court erred because it identified and applied incorrect standards for postconviction discovery and failed to weigh other factors in making its decision. We disagree and deny Jones's petition.

PROCEDURAL AND FACTUAL BACKGROUND

In 1994, a jury convicted Bryan Maurice Jones of the first degree murders of JoAnn S. and Sophia G. (§§ 187, 189), the attempted murder of Maria R. and Karen M. (§§ 664, 187), and the forcible rape, sodomy and oral copulation of Karen M. (§§ 261, subd. (a)(2), 286, subd. (c), 288a, subd. (c).) The jury also sustained an allegation that Jones used a deadly weapon in the attempt to murder Maria R. (§ 12022, subd. (b)), along with special circumstance allegations: Jones murdered JoAnn S. and Sophia G. during the commission or attempted commission of the crime of sodomy (§ 190.2, subd. (a)(17)), and he committed multiple murders (§ 190.2, subd. (a)(3)). Jones was also charged with the murders of Trina C. and Tara S. The jury hung 11 to one in favor of guilt for Trina C.'s murder and eight to four in favor of guilt for Tara S.'s murder. (*People v. Jones* (2013) 57 Cal.4th 899, 910 (*Jones*).) The jury sentenced Jones to death (§ 190.1 et seq.), and the judgment was affirmed on appeal. (*Jones*, p. 981.)

¹ Further section references are to the Penal Code unless otherwise specified.

As part of his postconviction discovery requests, Jones sought investigative materials related to six alternative suspects who were investigated by the task force and one unsolved homicide. The court denied these requests.

During the hearing on the matter, the trial court explained its process: "The Court should look at similarities and whether those similarities in these other defendants and other suspects—whether there is a significant similarity and whether there is a direct connection between the third party and the crime in our case, looking particularly at *People versus Suff, S-U-F-F*, 58 Cal.4th 1013. [¶] The Petitioner has cited similarities in terms of most of these suspects. Their crimes involved strangulation or suffocation. The bodies, many of them, were dumped. They're generally during the same general time period. [¶] The question is whether they have sufficient similarity and whether there is some connection between the victims in our case and the crimes in our case and the suspects, and I think that's what the case law requires." The court summarized its conclusion: "I am not seeing that the Petitioner has shown significant similarity and a direct connection in order to require discovery by the People." The court then addressed each of the alternative suspects individually.

DISCUSSION

A

Standard of Review

We generally review a trial court's ruling on discovery matters under an abuse of discretion standard. (*People v. Ayala* (2000) 23 Cal.4th 225, 299.) An abuse of discretion is shown when the trial court applies the wrong legal standard. (*Zurich*

American Ins. Co. v. Superior Court (2007) 155 Cal.App.4th 1485, 1493.) However, when a superior court's denial of discovery turns on a question of law, the court's action is subject to de novo review. (*Gilbert v. Superior Court* (2014) 224 Cal.App.4th 376, 380.) If the ruling is a mixed question of law and fact that concerns "the application of the rule to the facts and the consequent determination [of] whether the rule is satisfied," and the inquiry requires a critical consideration of legal principles in a factual context, the decision is subject to de novo review. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.) Here, the dispute is whether the trial court identified and applied the correct legal standards concerning postconviction discovery of materials regarding alternate suspects; thus, we conduct our review de novo.

B

Legal Principles

Jones contends the court erred by requiring him to demonstrate admissibility rather than requiring him to show only "some similarities" to warrant the disclosure of alternate suspect discovery. He further contends there is no requirement that he show a "direct connection" between the possible alternate perpetrators and the victims or crimes for which Jones was charged, only that the additional killing was "sufficiently similar to the charged crimes to tend to rebut the prosecution's theory that all of the charged homicides were committed by the same person." We disagree.

Penal Code section 1054.9, subdivision (b) entitles a defendant preparing a postconviction writ of habeas corpus application to discovery of all materials provided by the prosecution in pretrial discovery as well as any discoverable materials to which the

defendant would have been entitled at the time of trial. (*In re Steele* (2004) 32 Cal.4th 682, 692 (*Steele*).) " "[T]he court has discretion to deny discovery in the absence of a showing which specifies the material sought and furnishes a 'plausible justification' for inspection. [Citations.]" " (*City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, 1132-1133 (*Alhambra*), quoting *Hill v. Superior Court* (1974) 10 Cal.3d 812, 817.) The defendant bears the burden of establishing a plausible justification for production of the materials. (*Alhambra*, at pp. 1133-1134.) "[T]he information sought would have to assist defendant in establishing that he was not responsible for an uncharged killing and [that the uncharged] killing was sufficiently similar to the charged crimes to tend to rebut the prosecution's theory that all of the charged homicides were committed by the same person." (*People v. Suff* (2014) 58 Cal.4th 1013, 1060 (*Suff*).)

Moreover, "[t]o be exculpatory as third party culpability evidence, the information sought would have to assist defendant in establishing that the uncharged prostitute killings were committed by a third party who was directly connected to a charged crime."² (*Suff, supra*, 58 Cal.4th at p. 1059.) To determine whether there is a direct connection, a court should consider whether there is a reasonable likelihood the materials do or might lead to direct or circumstantial evidence linking the third party to the charged crimes. (*Alhambra, supra*, 205 Cal.App.3d at pp. 1133-1134.) Thus, a trial court should

² Although the *Suff* court did not reach a conclusion as to whether there was a direct connection in that case because it concluded the defendant did not identify the discovery it was seeking with sufficient specificity, this does not change the legal requirements for demonstrating a plausible justification for the discovery. (*Suff, supra*, 58 Cal.4th at pp. 1059-1061.)

consider whether the other crime is sufficiently similar to the crime for which the defendant is charged and whether the third party was directly connected to any of the charged crimes. (See *Suff*, at pp. 1059-1060.)

Jones cites to *People v. Littleton* (1992) 7 Cal.App.4th 906 (*Littleton*) to support his contention that a requesting party meets its burden of showing plausible justification by demonstrating "some similarities." The *Littleton* opinion relies on *Alhambra*, a case in which a defendant requested and received police reports pertaining to crimes "which bore some similarities to the crimes with which the defendant was charged." (*Alhambra*, *supra*, 205 Cal.App.3d at p. 1136; *Littleton*, at p. 910.) *Alhambra* does not describe in detail what the similarities were or why they were sufficient; it notes that "[a] minimal demonstration of plausible justification was made" and explains that "[n]o bright line test exists as to just what facts will suffice, in any particular case, to meet this standard [of plausible justification]." (*Alhambra*, at pp. 1136, 1134.) In other words, while there must be a minimal demonstration of plausible justification, which requires "sufficient similarity" between the alternate suspect's crimes, there is no bright line for determining the sufficiency of similarities.

C

Analysis

Jones contends the court's use of the phrase "significant similarities" when comparing the crimes of third parties to those of Jones demonstrates that the court applied an incorrect standard to make its discovery decision. However, the court discussed whether Jones supplied a plausible justification for discovery, stating it would evaluate

whether the crimes had a "sufficient similarity" and whether there was a connection between the victims in Jones's case and the crimes and suspects in the other cases. Thus, at issue is whether the court followed this standard when it concluded Jones had not shown "significant similarity" and a "direct connection." Although the court used the phrase "significant similarities" in its overview of the process and its conclusion regarding the discovery requests on the whole, in its individual evaluations of each alternate suspect, the trial court considered whether there were sufficient similarities and a direct connection, as we detail *post*.

1. *Terry Millaud*

Terry Millaud was charged with the murder of Patricia S., whom he killed after a drug deal went wrong. Patricia S., who was African-American, died from multiple stab wounds, and her body was recovered from the hotel room where Millaud had been the night before.

Jones compared this crime to the death of Tara S., a crime for which he was charged. Tara S. was an 18-year old African-American prostitute who had been burned almost beyond recognition in a fire that had been set intentionally using an accelerant in a dumpster in the alley behind Jones's apartment. (*Jones, supra*, 57 Cal.4th at p. 909.) The autopsy revealed an injury like a knife wound to her abdomen and evidence of asphyxia. (*Id.* at pp. 909-910.) It was believed she died from alcohol and cocaine poisoning, and there was acid phosphatase in her mouth, vagina and rectum, which indicated seminal fluid. (*Id.* at p. 910.)

The court noted the details of Tara S.'s death were similar to the details of Patricia S.'s homicide, but it denied the discovery request because it concluded Jones did not show a direct connection between Millaud and any of Jones's charged crimes or victims. The court also noted Jones was not convicted of killing Tara S.

Although both crimes involve African-American women who were stabbed and asphyxiated, there were also differences, including the motives for killing, the locations of the bodies, and the causes of death. While we recognize that Jones residing near the hotel where Patricia S.'s body was found could lead to a direct connection between Jones and Patricia S., this misconstrues the connection requirement, which asks a defendant to connect the third party to one of the crimes for which the defendant was charged. Thus, Jones did not meet his burden of demonstrating a plausible justification here.

2. Alan "Buzzard" Stevens

Alan "Buzzard" Stevens was convicted of killing Cynthia M. Stevens had gagged Cynthia M. with a pair of his socks, which were held in her mouth with masking tape, on which Stevens's fingerprints were found. Cynthia M.'s partially covered, nude body was recovered on the Pala Indian Reservation, in a remote part of the northeast portion of San Diego county. Numerous orange carpet fibers matching the carpet in Stevens's van were found on her body and her personal items. The cause of death was manual strangulation. Officers assigned to the San Diego Metropolitan Homicide Task Force believed Stevens was responsible for the deaths of at least three other women discovered within miles of Cynthia M., and Stevens was heard saying he was running out of places to hide the bodies.

This crime was compared primarily to the homicide of Trina C., a 22-year-old African-American prostitute, whose body was found in a dumpster fire that was started by an accelerant in the alley about a block away from Jones's apartment. (*Jones, supra*, 57 Cal.4th at p. 910.) Trina C.'s body was found in a duffel bag. (*Ibid.*) Vaginal swabs indicated the presence of spermatozoa and seminal fluids, and tests showed cocaine and/or cocaine metabolites in her body at the time of death. (*Ibid.*) The cause of death was asphyxia due to strangulation. Jones was charged with but not convicted of her murder. (*Ibid.*)

The court acknowledged some similarities between the murders of Cynthia M. and Trina C., and it commented that Jones was not convicted of Trina C.'s murder. The court also identified similarities between Cynthia M.'s murder and the murders of JoAnn S. and

Sophia G., two of Jones's victims, including that all three women were strangled, their bodies were found partially nude with cover, and there were orange fibers at Cynthia M.'s and JoAnn S.'s crime scenes.³ However, the court noted Cynthia M. was Caucasian while Jones's victims were African-American, and the orange fibers in Cynthia M.'s case pointed to Stevens, while in JoAnn S.'s case, the orange fibers pointed to Jones, concluding that there were not sufficient similarities. The court also explained the bodies in the cases were not located near each other, and the similarities were generic in nature; the strangulation of prostitutes was common in the community at the time. Jones argues there were sufficient similarities between the deaths because orange fibers were found on all four bodies.

The court concluded there were not sufficient similarities because the similarities were generic. We agree. Moreover, Stevens's comment that he was "running out of places to hide the bodies," implying he could have killed a victim for whose death Jones was charged, does not offer a connection between Stevens and any of the crimes with which Jones was charged.

Jones separately contends the court applied an incorrect standard because it commented that it was looking at the cases from "almost an [Evidence Code, section]

³ There was at least one orange fiber found in connection with Trina C.'s and Sophia G.'s murders as well. However, the fibers were not tied to each other's crimes or to Jones.

1101⁴ standpoint," finding no signature to the crimes, or modus operandi that distinguished the killings.

The court's reference to Evidence Code section 1101 does not undermine the rest of its analysis; the court was responding directly to the defense attorney's argument that the Stevens investigation materials were discoverable because his crimes fit the pattern of crimes for which Jones was charged. The court's response reflected its evaluation that Stevens's crimes did not fit the pattern because the similarities were generic. Though the women were strangled and suffocated, this does not establish a sufficient similarity or a direct connection; thus, Jones did not adequately demonstrate plausible justification for his request.

3. *Ronald Porter*

Ronald Porter, who had served in the United States Marine Corps, was charged with or convicted of kidnapping, murder, or attempted murder of eight women. He would offer women a ride, then pull off the road to use the restroom, approach the passenger side door, pull out the passenger, and choke her until she fell unconscious. Two victims were recovered in a remote area of East County and a third was dumped near Old Highway 80 in East County. Most of the victims were transients or hitchhikers;

⁴ Evidence Code section 1101 prohibits admission of a person's character when it is offered to prove his conduct on a specific occasion, but it permits the admission of evidence that a person committed a crime when it is relevant to prove a fact such as motive, opportunity, intent, plan, all purposes other than the defendant's disposition to commit the particular act. (Evid. Code, § 1101, subds. (a) & (b).)

not all of them were prostitutes. At least one died because she bled to death, not from being strangled. Porter was linked to his crimes by tire tracks, fibers, and footprints.

The court described the crimes as "very dissimilar" because one was a robbery with a shotgun, and Jones did not use a shotgun in any of the charged crimes. Moreover, even if Porter could be connected to Trina C.'s murder because her body was found in a Marine Corps duffel bag and Porter was a former Marine, the dissimilarities between the crimes means there was not a plausible justification for discovery of the Porter investigation materials.

Jones separately contends the court improperly denied the discovery because it considered that Jones was not convicted of Trina C.'s murder, commenting the acquittal lessened the need for alternate suspect evidence. We agree the court incorrectly considered the verdict in determining whether there was plausible justification of the requested materials. Because a defendant preparing a postconviction writ of habeas corpus is entitled to any materials to which the defendant was entitled before and during trial (*Steele, supra*, 32 Cal.4th at p. 692), a court should not consider the trial's outcome in making its determination. However, here the court separately concluded the crimes were very dissimilar, a requirement for demonstrating plausible justification not reliant on the timing of the request. (See *Suff, supra*, 58 Cal.4th at pp. 1059-1060; see also *Alhambra, supra*, 205 Cal.App.3d at pp.1132-1133.)

4. *Blake Taylor*

Blake Taylor was charged with attempted murder, robbery, false imprisonment, and the assault of Diane D., who was a prostitute. Taylor drove Diane D. to an area near

sand dunes, to an ATM machine, to a liquor store, and then to an area near the San Diego River, near Mission Valley. He took out a shotgun and pointed it at Diane D.'s head. When he put aside the shotgun to drive, Diane D. escaped.

The crimes were "very dissimilar" because Taylor engaged in robbery with a shotgun, and there was no evidence of a shotgun in Jones's charged crimes. The court concluded the crimes were not "sufficiently similar."

Here the court applied the correct standards; the dissimilarity between the crimes demonstrates a lack of plausible justification.

5. *Donald Eugene Couch*

Couch was arrested for killing Linda F., whose body was found in Palm City, California, five months after Tara S.'s death. The court recognized similarities between Linda F.'s death and Tara S.'s death, as both women had been strangled and stabbed; however, the court concluded more similarity was required to establish plausible justification than Jones could show, commenting there was not a "significant similarity." The court also said it did not find a direct connection between Couch and the crimes for which Jones was charged, and it stated Jones was not convicted of Tara S.'s homicide.

At first blush, some of the court's comments appear problematic. As an initial matter, we disagree that the need for discovery was lessened because Jones was not convicted of killing Tara S. As we noted previously, because a court considers whether a defendant would have been entitled to the evidence if requested at the time of trial, the verdict is not relevant. (See *Steele*, *supra* 32 Cal.4th at p. 692 [entitled to pretrial

discovery and discovery to which entitled at time of trial].) However, it does not appear this was the only reason the court denied the request for discovery.

The court also concluded there was not a sufficient similarity between the homicides, and there was no direct connection between Couch's and Jones's crimes. Although the court used the words "significant similarity," its discussion indicates it was using the word "significant" in the vernacular sense because it recognized the generic similarities of the injuries the victims suffered.⁵ The court's comment came after the defense attorney argued the appropriate standard was one of sufficiency and after the district attorney highlighted a lack of any direct connection. Moreover, even were there sufficient similarities, because there was no direct connection between Couch and Jones's charged crimes or victims, the investigatory materials were not discoverable.

6. *James Jackson*

Jackson was arrested after he choked a prostitute to unconsciousness. The newspaper articles Jones supplied in support of his request for disclosure reported that Jackson picked up a prostitute in his white pickup truck and drove her to a parking lot, where they climbed into the back of the truck, covered by a camper shell. The woman

⁵ Merriam-Webster's Collegiate Dictionary defines "significant" as "having meaning." (Merriam-Webster's Collegiate Dict. (11th ed. 2003) p. 1159.) The court appeared to consider whether there were meaningful similarities. This is not different from its consideration in this context of whether the similarities were "sufficient," or "enough to meet the needs of the situation" (*id.* at p. 1248), particularly given that there is no bright line rule for which facts must exist to meet the standard of plausible justification. (*Alhambra, supra*, 205 Cal.App.3d at pp. 1136, 1134.)

awoke to a bloody nose after Jackson choked her to unconsciousness. Jackson pleaded guilty and apologized publicly.

The court explained the newspaper articles contained very few details, and it did not have "sufficient information to make a detailed analysis based on a newspaper article." It was Jones's burden to demonstrate an entitlement to the discovery materials. (*Alhambra, supra*, 205 Cal.App.3d at pp. 1132-1133.) Here, there was not evidence of sufficient similarities.

7. *Unsolved Murder of Linda B.*

Linda B., a 38-year-old Caucasian woman, was recovered in Balboa Park in San Diego, partially nude. No drugs were detected in her system. The cause of death was manual strangulation. Her homicide is unsolved.

The defense compared this crime to the homicide of Sophia G., whose body was discovered rolled in a blanket and placed on the grassy area between the sidewalk and the street, about a block from the home where Jones's mother was working as an in-home caregiver. (*Jones, supra*, 57 Cal.4th at p. 911.) Sophia G. was a 37-year-old African-American woman who may have been a prostitute. (*Ibid.*) She suffered severe trauma to her chest, neck, and head, and she had cocaine in her system. (*Ibid.*) The cause of her death was asphyxia due to strangulation. (*Ibid.*)

Like Sophia G., Linda B. was strangled. The victims' clothes and personal effects were found near their bodies, and both had sperm in their vaginas and recta. Jones argued he could not have killed Linda B. because he was incarcerated at the time of her death, so evidence related to Linda B.'s death could indicate he was not guilty of the

similar murder of Sophia G. The court stated the ability to solve the 28-year-old murder was de minimis, and discovery should be denied for that reason.

Though the court did not undertake an evaluation of the similarities between the victims, we note some dissimilarities, including their races, where their bodies were found, and the lack of drugs in Linda B.'s system. Additionally, the court's focus on the unlikelihood that Linda B.'s murder would be solved underscores why the evidence would not be exculpatory here. To be exculpatory, the information would have to help Jones establish that Linda B.'s killer was directly connected to any of his charged crimes. (*Suff, supra*, 58 Cal.4th at pp. 1059-1060.) Without knowing who killed Linda B., Jones would be unable to draw this connection. Thus, Jones did not demonstrate the requisite plausible justification here.

In light of the requirement that the defendant bear the burden of establishing a plausible justification for production of the materials (*Alhambra, supra*, 205 Cal.App.3d at pp. 1133-1134) and the information regarding each alternative suspect, we independently conclude the denial of the postconviction discovery requests was appropriate.

D

Balancing of Interests

Jones contends the court failed to consider the potential exculpatory value of the evidence weighed against any applicable privilege asserted by the prosecution, as it was required to do. Jones recognizes Evidence Code section 1040 provides a state interest against disclosure of information related to an ongoing investigation in which no arrest

has been made. (See *Littleton, supra*, 7 Cal.App.4th at p. 910.) However, Jones contends the information sought, particularly related to Linda B.'s unsolved homicide, was potentially exculpatory, and he further contends any claim of privilege had been reduced by the passage of time between Linda B.'s death and the start of Jones's trial.

Jones is correct that "[a] trial court has discretion to deny disclosure . . . when the necessity for confidentiality outweighs the need for disclosure" (*Suff, supra*, 58 Cal.4th at p. 1059.) However, this is only part of the rule; the trial court also has discretion to deny disclosure " 'when there is an " 'absence of a showing which specifies the material sought and furnishes a "plausible justification" for inspection.' " ' " (*Ibid.*) If a court concludes the defendant failed to provide a plausible justification because there are not sufficient similarities between the crimes or because the defendant failed to demonstrate a direct connection between the alternate suspect and the charged crimes or victims, it is not required to separately weigh the need for disclosure against the necessity for confidentiality. (See *ibid.*) Here, the court was not required to weigh the potential exculpatory value of the evidence against the need for confidentiality because Jones did not show the information would help establish that the crimes were sufficiently similar, and the third party was directly connected to the crime. (See *ibid.*)

DISPOSITION

The petition for writ of mandate is denied.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

AARON, J.